

BILL LOCKYER, Attorney General  
of the State of California  
ADRIAN K. PANTON, State Bar No. 64459  
Deputy Attorney General  
California Department of Justice  
300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-6593  
Facsimile: (213) 897-9395  
Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

About the Accusation Against:

STEVEN FERNANDO PENA  
904 Silver Spur Road, #485  
Rolling Hills Estates, CA 90274

Respiratory Care Practitioner License No. 15392

Respondent.

Case No. R-2029

OAH No. L-2006 040 786

**A C C U S A T I O N**

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California (Board).

2. On or about August 24, 1992, the Board issued Respiratory Care Practitioner License Number 15392 to Steven Fernando Pena (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2008, unless renewed.

**JURISDICTION**

3. This Accusation is brought under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California,

1 hereafter referred to as the Board, shall enforce and administer this chapter [Chapter 8.3, the  
2 Respiratory Care Practice Act].”

3 5. Section 3718 of the Code states: “The Board shall issue, deny, suspend, and  
4 revoke licenses to practice respiratory care as provided in this chapter.”

5 6. Section 3750 of the Code states:

6 “The Board may order the denial, suspension or revocation of, or the imposition of  
7 probationary conditions upon, a license issued under this chapter, for any of the following  
8 causes:

9 “(g) Conviction of a violation of any of the provisions of this chapter or of any  
10 provision of Division 2 (commencing with Section 500), or violating, or attempting to violate,  
11 directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any  
12 provision or term of this chapter or of any provision of Division 2 (commencing with Section  
13 500).

14 “(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially  
15 related to the qualifications, functions, or duties of a respiratory care practitioner.

16 7. Section 3750.5 of the Code states:

17 "In addition to any other grounds specified in this chapter, the Board may deny,  
18 suspend, or revoke the license of any applicant or license holder who has done any of the following:

19 "(a) Obtained or possessed in violation of law, or except as directed by a licensed  
20 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or  
21 administered to another, any controlled substances as defined in Division 10 (commencing with  
22 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2  
23 (commencing with section 4015) of Chapter 9.

24 8. Section 3752.6 of the Code states:

25 “For purposes of Division 1.5 (commencing with Section 475), and this chapter [the  
26 Respiratory Care Practice Act], a crime involving sexual misconduct or attempted sexual  
27 misconduct, whether or not with a patient, shall be considered a crime substantially related to  
28 the qualifications, functions, or duties of a respiratory care practitioner.”

1                   9.       Section 3752.7 of the Code states:

2                   “Notwithstanding Section 3750, any proposed decision or decision issued under this  
3 chapter [Chapter 8.3, the Respiratory Care Practice Act] in accordance with the procedures  
4 set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of  
5 the Government Code, that contains any finding of fact that the licensee or registrant engaged  
6 in any act of sexual contact, as defined in Section 729, with a patient, or has committed an act  
7 or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall  
8 contain an order of revocation. The revocation shall not be stayed by the administrative law  
9 judge. For purposes of this section, the patient shall no longer be considered a patient of the  
10 respiratory care practitioner when the order for respiratory procedures is terminated,  
11 discontinued, or not renewed by the prescribing physician and surgeon.”

12                  10.       California Code of Regulations, title 16, section 1399.370, states:

13                  “For the purposes of denial, suspension, or revocation of a license, a crime or act shall  
14 be considered to be substantially related to the qualifications, functions or duties of a  
15 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
16 perform the functions authorized by his or her license or in a manner inconsistent with the  
17 public health, safety, or welfare. Such crimes or acts shall include but not be limited to those  
18 involving the following:

19                  “(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the  
20 violation of or conspiring to violate any provision or term of the Act.

21                  11.       Section 3753.5, subdivision (a) of the Code states:

22                  “In any order issued in resolution of a disciplinary proceeding before the Board, the  
23 Board or the administrative law judge may direct any practitioner or applicant found to have  
24 committed a violation or violations of law to pay to the Board a sum not to exceed the costs  
25 of the investigation and prosecution of the case. A certified copy of the actual costs, or a good  
26 faith estimate of costs where actual costs are not available, signed by the official custodian of  
27 the record or his or her designated representative shall be prima facie evidence of the actual  
28 costs of the investigation and prosecution of the case.”

12. Section 3753.7 of the Code states:

“For purposes of this chapter, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing and service fees.”

### **FIRST CAUSE FOR DISCIPLINE**

(Corrupt Acts Involving Predatory Behavior Towards Children & Child Pornography)

13. Respondent is subject to disciplinary action under Business and Professions Code section 3750, subdivision (j) for the commission of fraudulent, dishonest, or corrupt acts which are substantially related to the qualifications, functions, or duties of a respiratory care practitioner, to wit, predatory behavior towards children and possession of child pornography. The circumstances are as follows:

1. On or about June 2, 2005, Kathy Hale, an adult female volunteer for the Website *Perverted-Justice.com* was viewing Yahoo chat rooms for conversations where adult males were seeking females under the age of 18 for sexually related activities. *Perverted-Justice.com* is a Web site which uses a network of volunteers to scour Internet chat rooms for the purpose of identifying and reporting to law enforcement agencies adults who use the chat rooms to seek sexual encounters with minors. At no time do the volunteers initiate the dialogue with the adult nor, after the dialogue is in progress, do they raise the topic of sex.

2. On June 2, 6, and 7, Hale made contact with Mr. Pena who was using the screen name “beachbum\_hb2000.” During the June 2 conversation, Hale was using the screen name “sweetlaynie92 ” and presented herself as a 12-year-old girl with a picture of a young girl which she displayed in the chat room profile. Respondent initiated a conversation with Hale where he stated that Hale looked hot and asked if they could meet just to masturbate each other. Over the course of the June 2 conversation, Respondent asked Hale if she had any sexy pictures, had she ever touched a cock, and if she liked to have her pussy rubbed.

3. On June 6, in response to Respondent’s request for a picture, Hale sent a picture of the breasts of an adult female. Respondent told Hale he was not falling for that because he expected to see a picture of her face. In the context of this dialogue, he also told

1 Hale that he had been online since 1996 and he knew all the tricks. Based on this June 6  
2 dialogue with Respondent, Hale e-mailed detective Richard Sheldon of the Riverside County  
3 Sheriff's Office with a summary of her June 2 and June 6 chat room conversations with  
4 Respondent.

5 4. On June 7, Hale replied to an instant message from Respondent asking  
6 if she had any hot pictures and Hale responded "maybe." Respondent was still using the  
7 screen name "beachbum\_hb2000" and Hale was using the screen name "lara\_liz\_so\_bored  
8 " stating that she was 13-years-old. Over the course of this conversation, Respondent asked  
9 Hale if her ex-boyfriend had ever kissed her pussy and if he had taken pictures of her. He also  
10 asked Hale if she liked to make guys horny in chat room conversations and when she asked  
11 why would she do that, Respondent said "well to masturbate maybe."

12 5. Mr. Pena was arrested on October 13, 2005, by detective Richard D.  
13 Sheldon of the Riverside County Sheriff's Office and during his interview with Sheldon,  
14 Respondent admitted that he had a drug problem and that his Internet conversations with underage  
15 females began two years prior to his arrest. He also admitted that he sent pictures of his naked  
16 penis to at least 10 underage girls and that he had many pictures of child pornography.  
17 Respondent further admitted that he knew it was illegal to send pornographic photos to girls  
18 under the age of 18. Included among the persons to whom Respondent sent photos of his  
19 exposed penis was Hale, the profile who reported Respondent to Sheldon's attention.  
20 Respondent also admitted that he has had phone sex with girls under the age of 18.

21 6. In the course of the October 13 conversation, Respondent admitted to  
22 Sheldon that he met a 16-year-old girl on the Internet and they later agreed that he would pick  
23 her up at her school. Respondent picked her up from school and they drove to a secluded area  
24 behind a store where he masturbated his exposed penis in front of her and she masturbated his  
25 exposed penis while he touched her breasts.

26 7. On account of the behavior set forth above, criminal charges were filed  
27 against Mr. Pena and are currently pending in Riverside Superior Court as are described more  
28 fully in Paragraph 13 below.

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(Obtaining and Possessing Cocaine, a Controlled Substance)

14. Respondent is subject to disciplinary action under Business and Professions Code section 3750.5, subdivision (a) in that he obtained and possessed cocaine in violation of law. Cocaine is a controlled substances and dangerous drug. The circumstances are as follows:

a. Respondent was arrested on October 13, 2005, relating to the conduct described in the First Cause for Discipline. Following the interview with detective Sheldon, Respondent was transported to a detention center where the transporting officer, Deputy L. Harvey, noticed a folded bill in Respondent's billfold which contained a white powdery substance. Respondent admitted to Harvey that the substance was cocaine.

b. A report by a Department of Justice criminalist, dated October 21, 2005, revealed that the white powdery substance was cocaine in the amount of .25 grams.

c. On March 14, 2006, respondent was arraigned in Superior Court, Riverside County, based on the following charges filed on March 10, 2006, in Felony Complaint No. RIF 128989:

Count 1 - Attempt to send harmful matter (relating to sexual conduct) to a minor with  
the intent to seduce the minor (Pen. Code §§ 664/288.2, subd. (a))

Count 2 - Possession of a controlled substance (Health & Saf. Code § 11350)

Count 3 - Sale of child pornography (Pen. Code § 311.2, subd. (b))

Count 4 - Possession of matter where minor engages in or simulates sexual conduct  
(Pen. Code § 311.11, subd. (a), a misdemeanor).

### PRIOR DISCIPLINARY ACTION

15. For the purpose of establishing the degree of discipline to be imposed, the Complainant alleges that Mr. Pena has been previously disciplined. On January 31, 2003, in proceedings entitled *In the Matter of the Accusation Against Steven Fernando Pena*, case number R-1717, Mr. Pena was publically reprimanded by the Board for having been criminally convicted on February 4, 2002 for driving under the influence of alcohol. The circumstances surrounding his conviction were that he had a blood alcohol level of 0.14% while driving on December 12, 2001.

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**PRAYER**

**WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 15392, issued to Steven Fernando Pena; and
2. Ordering him to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: May 30, 2006

Original signed by Liane Zimmerman for:  
STEPHANIE NÚÑEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant